with notice. If, however, the dissimilarity between the names is great, as in the Hesser case, or if the name is such a common one that all the person's initials must necessarily be given in order to complete the identification, then the purchaser takes without notice.

The above conclusions seem to follow from the decisions cited. It is, however, interesting to note that in at least one State[16] it has been declared that the name in which the title was *originally acquired* is conclusive, even though that name is not the one by which the party is generally known. Such a test can obviously be applied only where the title was acquired by purchase, and for equally obvious reasons, is unsatisfactory even where it can be applied.

Augusta, Ga. AUSTIN BRANCH.

RECENT AMENDMENTS TO THE BANKRUPTCY ACT.

An Act to establish a uniform system of bankruptcy throughout the United States was passed by Congress in 1898 and duly approved by President McKinley on the 1st day of July of that year. On the 17th of June, 1902, an Act to amend the law was passed by the House of Representatives, and on January 21, 1903, the Senate passed the same, with further amendments, which were accepted by the House, and the Act has been duly approved by the President.

These amendments are as follows:

1. *Compensation to officials for conducting business of the bankrupt.*—Clause (5) of section 2 of the original Act has been amended so as to allow receivers, marshals or trustees conducting (for limited periods) the business of the bankrupts, additional compensation for such services, but not at a greater rate than compensation allowed trustees, which will be set forth in due time in this article.

It seems clear that this amendment only limits the power of the court in fixing receivers' compensation to cases where the business of the bankrupts is actually conducted by such receivers, as clause (3) of section 2, giving general jurisdiction for the appointment of receivers or marshals to take charge of the bankrupt's estate,

[16] Grundies *v.* Reid, 107 Ill. 304.

has not been amended, nor the rate of compensation of such officers fixed.

2. *Additional acts of bankruptcy.*—In addition to the acts of bankruptcy enumerated in sec. 3 a, the following has been added:

"being insolvent, applied for a receiver or trustee for his property, or because of insolvency a receiver or trustee has been put in charge of his property under the laws of a State, of a territory, or of the United States."

3. *Mining companies as involuntary bankrupts—Bankruptcy of corporation not to affect liability of its officers and shareholders under general laws.*—Section 4 b has been amended so that *mining companies* may be adjudged involuntary bankrupts, and further, so that:

"The bankruptcy of a corporation shall not release its officers, directors, or stockholders, as such, from any liability under the laws of a State or territory or of the United States."

4. *Discharges when not granted.*—Section 14 b of the amendatory acts adds to the provisions preventing the granting of a discharge the following:

(3) The obtaining of "property on credit from any person upon a materially false statement in writing made to such person for the purpose of obtaining such property on credit"; or

(4) "At any time subsequent to the first day of the four months immediately preceding the filing of the petition transferred, removed, destroyed, or concealed, or permitted to be removed, destroyed, or concealed any of his property with intent to hinder, delay, or defraud his creditors"; or

(5) "In voluntary proceedings been granted a discharge in bankruptcy within six years"; or

(6) "In the course of the proceedings in bankruptcy refused to obey any lawful order of or to answer any material question approved by the court."

5. *Liabilities not affected by a discharge.*—Section 17, clause (2) of the original act provided that *judgments* in actions for frauds, or obtaining property by false pretenses of false representations, or for wilful and malicious injuries to the person or property of another, should not be affected by a discharge.[1] The amendatory act strikes out the word "judgments" and places in lieu thereof *"liabilities* for obtaining property by false pretenses," etc., and leaves out "frauds" altogether. It adds the following: *"Alimony due or to become due, or for maintenance or support of wife or*

[1] See Morse *v.* Kaufman, 4 Va. Sup. Ct. Rep. 172, 8 Va. Law Reg. 41, and editorial note, p. 131.

child, or for seduction of an unmarried female, or for criminal conversation."

6. *Procedure.*—Section 18: In cases of the filing of involuntary petitions in bankruptcy, when personal service cannot be made upon the alleged bankrupt, notice shall be given by publication in the same manner and for the same time as provided by law

"for notice by publication in suits to enforce a legal or equitable lien in courts of the United States, except that, unless the judge shall otherwise direct, the order shall be published not more than once a week for two consecutive weeks, and the return-day shall be ten days after the last publication, unless the judge shall for cause fix a longer time."

And instead of the bankrupt, or any creditor, appearing and pleading to the petition "within ten days after the return day," it is now provided that this may be done within *five* days after the return day.

7. *Evidence—Bankrupt's wife as a witness.*—Under the head of Evidence (section 21 a), the *wife* of a bankrupt may be required to appear in court or before a referee, or judge of any State court, to be examined concerning the acts, conduct, or property of a bankrupt, but with this provision, that she may be "examined only touching business transacted by her or to which she is a party, and to determine the fact whether she has transacted or been a party to any business of the bankrupt."

8. *Suits by trustees.*—The provision that suits by the trustees (section 23 b) 'shall only be brought or prosecuted in the courts where the bankrupt, whose estate is being administered, might have brought or prosecuted them, if proceedings in bankruptcy had not been instituted (unless by consent of the proposed defendant),' has been amended so that suits for the recovery of property under section 60 b may be brought in any *court of bankruptcy,* as well as in any State court which would have had jurisdiction if bankruptcy had not intervened; and the amendment also includes suits for the recovery of property conveyed, transferred, assigned, or encumbered with fraudulent intent, or which is held null and void by the laws of any State, as provided in sections 67 e and 70 e.[2]

9. *Duties of trustees—Filing copy of adjudication for record in*

[2] The following language is added to secs. 60 b, 67 e and 70 e: "For the purpose of such recovery any court of bankruptcy as hereinbefore defined, and any State court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction."

office of registry of deeds.—Section 47 is amended by adding thereto a new subdivision (c), which is as follows:

"The trustee shall, within thirty days after the adjudication, file a certified copy of the decree of adjudication in the office where conveyances of real estate are recorded in every county where the bankrupt owns real estate not exempt from execution, and pay the fee for such filing, and he shall receive a compensation of fifty cents for each copy so filed, which, together with the filing fee, shall be paid out of the estate of the bankrupt as a part of the cost and disbursements of the proceedings."

10. *Proof and allowance of claims—Surrender of preferences.*—Section 57 g, as amended, reads as follows:

"The claims of creditors who have received preferences, *voidable under section 60, subdivision b, or to whom conveyances, transfers, assignments, or incumbrances, void or voidable under section 67, subdivision e, have been made or given,* shall not be allowed unless such creditors shall surrender such preferences, *conveyances, transfers, assignments, or incumbrances.*" (Amendments in italics.)

It will be seen that the amendments to the section distinctly specify the preferences, conveyances, etc., to be surrendered before any claims of those receiving them shall be allowed. There was an utter lack of harmony in the decisions on the question of what had to be surrendered as a condition precedent to the allowance of a creditor's claim, until the Supreme Court held in *Carson, Pirie, Scott & Co.* v. *Chicago Title & Trust Co.*[3] that even a payment in money made by an insolvent debtor to a creditor, the debtor not intending to give a preference, and the creditor not having reasonable cause to believe a preference was intended, nevertheless constituted a preference within the meaning of the Bankruptcy Act, and had to be surrendered before the balance of the debt or other claims of the creditor could be proved. This decision was extremely unpopular with business men all over the country, and they will hail with delight the change in the law.

11. *Debts which have priority—Expenses of creditors who have recovered estate of bankrupt.*—Section 64, sub-division b, clause (2), has been amended so as to empower the court to allow the reasonable expenses of one or more creditors who recover property of the bankrupt, transferred or concealed by him, when its recovery is for the benefit of the estate of the bankrupt.

12. *Compensation of referees and trustees.*—The compensation of the referee (sec. 40 a) has been increased as follows: $15 for

[3] 182 U. S. 438, 5 Am. B. R. 814.

filing fee, instead of $10, as heretofore; and 25 cents for filing proofs of claims, the latter to be paid from the estate. The commissions of trustees (formerly 3 *per centum* on the first $5,000 or less, 2 *per centum* on the second $5,000 or part thereof, and one *per centum* on excess of $10,000), are now 6 *per centum* on the first $500, 4 *per centum* on excess of $500 and less than $1,500, and 2 *per centum* on excess of $1,500 and less than $10,000, and one *per centum* on excess of $10,000. The compensation of clerks remains as formerly.

13. *Exemption to bankrupt—Debts as to which exemption is waived.*—The House of Representatives added a new section to the law as follows, viz:

"That when the bankrupt in any State has waived his right to claim his exempt property, to his creditors, the bankruptcy court shall not set apart to him this exemption as against said creditors."

The Senate struck this out entirely, and the law relative to exemptions remains as heretofore. Probably the leading case on the subject is *Woodruff* v. *Cheeves.*[4] It was there held that the bankruptcy court has no jurisdiction to protect and enforce the rights of creditors whose promissory notes contain a written waiver of the homestead and other exemptions authorized by any State law, nor has such court any jurisdiction to enter an order allowing such claims, or to declare liens against such exempt property in favor of creditors or to administer such property in their behalf, in the meantime staying the discharge of the bankrupt until the rights of the creditors, in whose favor the exemptions were waived, are settled. But the bankruptcy court has exclusive jurisdiction to determine all claims of the *bankrupt* to exemptions.[5]

The Act of 1898 is also amended by the addition of the following sections:

"Sec. 72. Neither the trustee nor the referee shall in any form or guise receive, nor shall the court allow them, any other or further compensation for their services than that expressly authorized and prescribed in this Act.

"Sec. 19. The provisions of this amendatory Act shall not apply to bankruptcy cases pending when this Act takes effect, but such cases shall be disposed of conformably to the provisions of said Act of July first, 1898."

Richmond, Va.,
February 7, 1903.

ROBERT H. TALLEY,
Referee in Bankruptcy.

[4] 5 Am. B. R 296.

[5] McGahan *v.* Anderson, 7 Am. B.'R. 641.